



UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

GRAHAM-FIELD, et al.,
Plaintiffs,
vs.
TUFFCARE, INCORPORATED,
Defendant.

CIVIL NO. 98-1306 (DRD)

ORDER

First, the Motion Withdrawing Motion to Schedule a Status and Settlement Conference (Docket No. 55), is **GRANTED**, and thus, the Motion to Schedule a Status and Settlement Conference (Docket No. 54) is **WITHDRAWN**. See also (Docket No. 56).

Tuffcare's Counterclaim & Plaintiffs' Request for a More Definite Statement.

To resolve the motions dealing with Defendant's, Tuffcare, Incorporated ("Tuffcare"), counterclaim, amendment thereto, and the Plaintiffs', Graham-Field, Inc. and Graham-Field Express (Puerto Rico) Inc. (collectively "Plaintiffs"), request for a more definite statement of the subject counterclaim the Court sets forth the relevant background. Tuffcare included a counterclaim (misnomered "cross claim") in its Answer to the Amended Complaint. (Docket No. 17). Plaintiffs filed a motion to dismiss the counterclaim (Docket No. 21), which was denied by the Court in a Marginal Order dated January 22, 1999. On that same date, the Court reiterated its order in the minutes of proceeding denying the Plaintiffs motion to dismiss and that the claim contained in Tuffcare's Answer shall be considered a counterclaim. Also therein, the Court stated that "Plaintiff may request in supplementation motion for [a] more Definite Statement under Rule 12(e) within the next ten (10) days."

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Thereafter, on March 2, 1999, Tuffcare file a Motion Requesting Order and Permission to File Amended Counterclaim (Docket No. 43), requesting *inter alia* a stay of discovery and in light of a letter request (in lieu of a motion to the Court) to Tuffcare from Plaintiffs for a more definite statement, Tuffcare requested thirty (30) days to file an amended counterclaim. Plaintiffs did not oppose the Defendant's request to file an amended counterclaim. Tuffcare's request to file an amended counterclaim within thirty (30) days, that is by April 3, 1999, is **GRANTED/MOOT**. (Docket No. 43). The remainder of the motion is **DENIED** (stay of discovery, etc.).

Further, Plaintiffs filed, on April 23, 1999, a Motion for a More Definite Statement Pursuant to Rule 12(e) Fed.R.Civ.P. (Docket No. 47) requesting a more definite statement of Tuffcare's counterclaim. Unopposed, that motion is **GRANTED**. (Docket No. 47). Therefore, Tuffcare is **ORDERED** to file an amended counterclaim addressing the deficiencies identified in Plaintiffs' motion (Docket No. 47), by **March 16, 2000**. Failure to comply with the Court's order will result in the counterclaim being summarily dismissed.

Remaining Motions.

Tuffcare filed an Urgent Motion Requesting Orders Pursuant to FRCP 37 (Docket No. 46), alleging that Plaintiffs have failed to comply with discovery requests and therefore, Plaintiffs should be sanctioned. Plaintiffs opposed (Docket No. 48) stating that Tuffcare's motion should be denied because: (1) Defendant's motion to compel regarding interrogatories should be denied because it mixes interrogatories and requests for documents; (2) Defendant's motion for an order should be denied because its interrogatories exceed the limit set forth in

1 Fed.R.Civ.P.; (3) Plaintiffs have properly responded to each request for admission; and (4) this
2 motion, and Defendant's demand for responses before it files its amended counterclaims, is
3 premature.

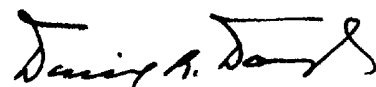
4 Furthermore, on October 7, 1999, Plaintiffs have filed a Motion for Default (Docket No.
5 52), requesting that the Court to summarily granted two motions filed on May 20, 1999, which
6 were not opposed nor was an extension requested. The first, is a motion for contempt order, a
7 fine for contempt, and other relief. (Docket No. 49). The second, is a motion for sanctions for
8 Defendant's repeated failure to appear for depositions. (Docket No. 50). Therefore, Tuffcare is
9 hereby **ORDERED TO SHOW CAUSE why the two motions** (Docket Nos. 49 & 50) should
10 not be summarily granted by March 16, 2000. No extensions shall be granted.

11 Wherefore, the Court sets the discovery dispute issue (Docket No. 46) and the order to
12 show cause on the motions for contempt and sanctions (Docket No. 49 & 50) for hearing on
13 March 17, 2000 at 1:30 p.m. The parties are **FOREWARNED** that the hearing shall
14 not be continued and severe sanctions may be imposed on noncomplying parties.

15 IT IS SO ORDERED.

16 **Date: February 29, 2000**

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19 **DANIEL R. DOMINGUEZ**
20 **U.S. DISTRICT JUDGE**